

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,
Plaintiff,
v.
SECRETARY, et al.,
Defendants.

No. 1:23-cv-00526-KES-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
TO STAY PROCEEDINGS

Doc. 37

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 21, 2023, the Court screened Plaintiff's second amended complaint, found he failed to state a cognizable claim for relief, and granted Plaintiff thirty days to file a third amended complaint. Doc. 32. In lieu of filing an amended complaint, Plaintiff filed objections to the Court's April 21, 2023, screening order which the Court construed as a motion for reconsideration. Docs. 33, 34. Plaintiff's motion for reconsideration was denied by the then-assigned district judge on September 18, 2023. Doc. 34. The Court's order noted that "[t]o the extent Plaintiff has presented new allegations that are not present in the second amended complaint, his remedy is to file a third amended complaint in compliance with the Court's April 21, 2023, screening order, not a motion for reconsideration." Doc. 34 at 3. On September 19, 2023, the Court granted plaintiff thirty days to file a third amended complaint, Doc. 35, and when

1 plaintiff did not file a third amended complaint by the deadline, on October 30, 2023, the Court
2 ordered plaintiff to show cause why the action should not be dismissed within fourteen days.
3 Doc. 36.

4 On November 1, 2023, plaintiff filed a motion to stay these proceedings, pending a
5 petition for writ of mandamus in the Supreme Court of the United States that plaintiff filed in
6 another case. Doc. 37. Given that the Supreme Court denied plaintiff's petition, *In re Lawrence*
7 *Smith*, No. 23-5850 (petition denied Jan. 8, 2024), plaintiff's motion to stay these proceedings
8 pending the petition's outcome is denied as moot. In addition, Federal Rule of Civil
9 Procedure 62(b) provides that a party may stay a judgment by providing a bond or other security.
10 Here, the record does not reflect a valid reason for a stay as no judgment has been entered and
11 plaintiff has not provided a bond or security. Accordingly, plaintiff's motion to stay the
12 proceedings is denied.

13 The Court will allow plaintiff a final opportunity to file a third amended complaint in
14 compliance with the Court's prior orders. *See* Docs. 32, 35. Any amended complaint must be
15 filed within thirty days from the date of service of this order or this action may be dismissed for
16 failure to prosecute and failure to obey court orders.

17 Accordingly, IT IS HEREBY ORDERED:

- 18 1. Plaintiff's motion to stay the proceedings, Doc. 37, is denied;
- 19 2. Within thirty (30) days from the date of service of this order, plaintiff shall file a third
20 amended complaint in compliance with the Court's April 21, 2023, screening order
21 (Doc. 32);
- 22 3. This case is referred back to the assigned magistrate judge for proceedings consistent
23 with this order.

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26 IT IS SO ORDERED.

27 Dated: November 2, 2024

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UNITED STATES DISTRICT JUDGE

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